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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,887	01/25/2002	Vincent E. DeGiulio	33836000002	2876
30498	7590	11/19/2007		
ACCENTURE C/O VEDDER PRICE KAUFMAN & KAMMHOLZ, P.C. 222 NORTH LASALLE STREET CHICAGO, IL 60601			EXAMINER BURGESS, BARBARA N	
			ART UNIT 2157	PAPER NUMBER
			MAIL DATE 11/19/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

9A

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/056,887

Applicant(s)

DEGIULIO ET AL.

Examiner

Barbara N. Burgess

Art Unit

2157

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see attached office action.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This Office Action is in response to After-Final amendment filed October 17, 2007.

Claims 1-13 and 30-34, 62-77 are presented.

### ***Response to Arguments***

**The Office notes the following argument(s):**

- (a) Radican does not determine whether containers are being used non-optimally.
- (b) As per claims 2, 11, and 31, the configuration engine component is a constituent component of the tracking manager, i.e., part of a device akin to Elliott's tracker server. However, Elliott's configuration engine component is initiated by the tracked device, not his tracking server.
- (c) As per claims 4, 8, 13, and 33, Radican reveals no teachings concerning environmental information.
- (d) As per claim 6, Radican is silent concerning the execution of rules with differing frequencies.
- (e) As per claims 63, 67, 71, and 75, no determination of whether at least two partially-full containers have been dispatched to a destination within a period of time.
- (f) As per claims 65, 69, 73, and 77, Radican fails to teach this limitation.

1. Applicant's arguments filed have been fully considered but they are not persuasive.

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**In response to:**

(a) Radican teaches monitoring retention time to accurately measure the total amount of time a container is retained on a destination's premises. If the containers are held for an excessive amount of time, this is considered to be non-optimal use of the container because customers must pay carriers for excess retention time of containers, which could not have been necessary. Therefore, verification of these charges must be made (column 6, lines 21-32, column 11, lines 9-20). Also, excessive switching of the container is monitored. Containers that are switched between yard and docks or docks multiple times before leaving the premises are recorded. This is considered non-optimal use of containers because this information is useful to customers in determining excessive switching which indicates production or distribution process inefficiency (column 8, lines 20-34, column 11, lines 48-60).

Therefore, Radican indeed teaches determining whether containers are being used non-optimally.

(b) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the configuration engine component is a constituent component of the tracking manager ) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(c) Radican teaches obtaining information on the area or boundaries surrounding the containers. The area can be factory, warehouse, plant, freight train station, distribution

center, or any other place (column 4, lines 32-35, column 12, lines 28-35). This can be considered environmental information.

As well, Elliott teaches receiving data associated with at least one of an environment, movement, and operation of a communication device (column 2, lines 2-4, column 5, lines 57-60, column 7, lines 25-28).

Therefore, Radican and Elliott undoubtedly teach concerns with environmental information.

(d) Elliott teaches different calculated speeds indicating the occurrence of alarm events. 50 MPH or 75 MPH can both indicate an event has occurred. These different frequencies cause rules to be executed (column 10, lines 30-55, column 11, lines 30-40).

Therefore, Elliott teaches the execution of rules with differing frequencies.

(e) Radican teaches monitoring and tracking containers and carrier performance. The system monitors and records all container movements and locations within facilities including arrival date and time and load status (full, partial, or empty). A cumulative load data for all incoming and outgoing containers for any particular premises or facility is monitored (column 5, lines 11-15, column 6, lines 15-32, column 7, lines 8-12, 31-35). Therefore, Radican indeed teaches a determination of whether at least two partially-full containers have been dispatched to a destination within a period of time

(f) Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically

pointing out how the language of the claims patentably distinguishes them from the references.

### **Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara N. Burgess whose telephone number is (571) 272-3996. The examiner can normally be reached on M-F (8:00am-4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Ettinene can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 16, 2007

Barbara N Burgess  
Examiner  
Art Unit 2157

  
ARIO ETIENNE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER